Laborers Local No. 135 (Bechtel Power Corporation and General Building Contractors Association) *and* Andrew Huggins, *and* Judith B. Chomsky

Laborers Local No. 135 (Corprew Construction Company, Inc.) *and* Judith B. Chomsky

P. D'Andrea, Inc. *and* Benjamin Brown, Jr.

Laborers Local No. 135 *and* Benjamin Brown, Jr.

Laborers Local No. 135 (Ryan Concrete and Construction Co., Inc.) *and* Stephen Michael Deitz. Cases 4-CB-4204, 4-CB-4256, 4-CB-4260, 4-CA-12348, 4-CB-4271, and 4-CB-4311

31 July 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMEBRS ZIMMERMAN AND HUNTER

On 6 December 1982 Administrative Law Judge Thomas A. Ricci issued the attached decision. The General Counsel and Respondent Laborers Local 135 (Respondent Union) filed exceptions and supporting briefs, and the General Counsel and the Charging Parties filed briefs in response to Respondent Union's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] as modified, but not to adopt the recommended Order.

The complaint in this case alleges unfair labor practices arising from three unique factual situations and presenting distinct issues of fact and law. The first portion of the case, involving Cases 4-CA-12348, 4-CB-4271, and 4-CB-4311, alleges in substance that Respondent Union violated Section 8(b)(1)(A) and (2) by causing two employers—Ryan Concrete and Construction Co., Inc. (Ryan) and P. D'Andrea, Inc. (D'Andrea)—to discharge certain employees because they were not members of Respondent Union and replace them with members of Respondent Union. Respondent D'Andrea is alleged to have violated Section 8(a)(3) and (1) by acceding to Respondent Union's demand.

The second portion of the consolidated complaint, involving Case 4-CB-4260, alleges that Respondent Union brought internal union charges against certain of its members and that fines were levied against those employees for refusing to engage in a work stoppage that would have been in violation of the applicable collective-bargaining agreement. By this conduct, Respondent Union is alleged to have violated Section 8(b)(1)(A).

The final portion of this case, involving Cases 4-CB-4204 and 4-CB-4256, alleges that Respondent Union violated Section 8(b)(1)(A) and (2) by operating its hiring and referral hall in a discriminatory fashion and, specifically, by failing and refusing to refer from its hall to available work eight named employees because of their internal union political activities. Each of these allegations is examined in turn below.

I. CASES 4-CA-12348, 4-CB-4271, AND 4-CB-4311

Ryan and Respondent D'Andrea are employers engaged in the concrete construction business. Commencing in June 1981 both were involved in the construction of a shopping mall located in Montgomery County, Pennsylvania. The jobsite was located within the geographic area covered by Respondent Union. The collective-bargaining agreement executed by Ryan and D'Andrea with Laborers' District Council of Philadelphia, of

[1] Respondent Union has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. Respondent Union also asserts that the judge was biased and prejudiced against it, and specifically alleges that the judge was racially prejudiced. We reject Respondent Union's baseless and spurious attacks on the judge and find after a careful examination of the record that no bias or prejudice, racial or otherwise, may be inferred from the record or the judge's rulings at the hearing.

While we find Respondent Union's assertions of bias and prejudice to be without merit, we do note with disapproval certain conduct of the judge. Thus, on at least two occasions the judge admitted that he had not been listening to the testimony and in response to an objection from counsel was forced to ask "What happened?" Further, the judge erroneously excluded from evidence G.C. Exhs. 5 and 35 and with respect to the latter refused to allow counsel for the General Counsel to make an offer of proof. Absent extraordinary circumstances, a judge's refusal to allow counsel to make such an offer of proof constitutes an abuse of discretion and clear error. The judge also improperly attempted to cut off prematurely counsels' cross-examination of certain witnesses. However, we find that the foregoing errors were not prejudicial to any party as the record as a whole fully presents the facts necessary for the Board and any reviewing court to decide the factual and legal issues adduced by the complaint and the contentions of the parties.

[2] Respondent Union has excepted, inter alia, to the judge's finding that it negotiates and deals with employers engaged in commerce within the meaning of the Act. While the judge inadvertently misnamed certain of the employers involved in this case, we deem his error immaterial. Respondent P. D'Andrea, Inc. admitted in its answer that it was a Pennsylvania corporation engaged in the construction industry with its principal place of business located in Philadelphia, and that in the past year it had purchased and received supplies and materials valued in excess of $50,000 directly from points located outside the Commonwealth of Pennsylvania. Similarly, a representative of Bechtel Power Corporation, a Nevada corporation engaged in the construction of a nuclear power plant in Limerick, Pennsylvania, testified that during the past 12-month period it purchased and received in Pennsylvania goods and materials valued in excess of $50,000 directly from points located outside the Commonwealth of Pennsylvania. These uncontroverted facts are more than sufficient to support the judge's conclusion that Respondent Union has dealings with employers engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act, and we so conclude.

which Respondent Union was a member, contained the following provisions:

> Employer, when doing work in any of the counties covered as aforesaid and serviced by any Local Union of the Laborers District Council, reserves the right to use his or its key employees, provided, nevertheless, that each such Employer shall endeavor to employ on each job a fair representation of employees from the geographical area in which the work is located.

Until about 30 June 1981 Respondent D'Andrea employed at the shopping mall job five members of Respondent Union and nine members of its sister Local 332, which was located in Philadelphia. On that date William Goodman (Respondent Union's business manager), Daniel Woodall (Respondent Union's president), and Billy Golden (Respondent Union's shop steward) met with Louis D'Andrea (D'Andrea's vice president) and William Schoenwald (D'Andrea's foreman). During this meeting, Goodman claimed that D'Andrea was employing too many members of Local 332 at the mall jobsite. Woodall demanded that D'Andrea bring the ratio of employees represented by Respondent Union to a "fair proportion," which he defined as 50 percent. Respondent Union threatened to file a grievance against D'Andrea unless it complied with that demand. After reviewing the shop steward's reports that showed the name and local union affiliation of each employee at the jobsite, D'Andrea agreed to terminate or lay off two Local 332 members (including Charging Party Benjamin Brown) and replace them with members of Respondent Union referred to the site by Respondent Union.

Similarly, beginning in June 1981 and continuing through August or September 1981, Woodall repeatedly demanded that Ryan employ a "fair representation" of laborers who were members of Respondent Union. Ryan resisted this demand until late August or early September when Woodall issued an ultimatum that either Ryan employ 50 percent of its employees from members of Respondent Union or Respondent Union would close down the job. Ryan acceded to Woodall's ultimatum and on 8 September 1981 terminated Charging Party Michael Deitz—a member of Local 332—and replaced him with a laborer referred to the jobsite by Respondent Union.

Based on the foregoing, the judge recommended dismissal of the complaint allegations relating to these charges. He found that the clause of the collective-bargaining agreement set forth above was a lawful provision requiring only that signatory employers endeavor to employ a "fair representation" of workers from the geographic area of the jobsite, here Montgomery County, and that the clause did not and legally could not require employers to hire employees who were members of Respondent Union or any other specified local union. The judge further found that, although Respondent Union's demands to these employers were phrased in terms of local union membership, the term "membership" was in fact a shorthand reference to geographic considerations. We do not agree.

The credited and uncontradicted testimony of Louis D'Andrea was that Goodman and Woodall complained that D'Andrea had "too many 332 men on the job" and that the places of residence of the employees were not discussed or considered. Similarly, Ryan's principal, Albert Tamburrino, testified that Woodall insisted that Ryan hire members of Respondent Union, but was unconcerned with the places of residence of employees at the job. The shop steward's reports relied on by Respondent Union to demonstrate the imbalance at the jobsite contained only the employees' names and union membership; they did not contain the employees' addresses. Respondent Union made no effort to discover the places of residence of the employees of Ryan or Respondent D'Andrea at the shopping mall jobsite and even was unconcerned with the places of residence of the members of Respondent Union it referred to the employers in order to establish the "fair proportion" demanded by Woodall.[3] Apart from the speculation and conjecture engaged in by the judge,[4] it is not an exaggeration to state that there is *no* credited evidence that shows that Respondent Union's demands were based on residence of employees rather than the employees' local union membership.

Accordingly, we find that Respondent Union violated Section 8(b)(1)(A) and (2) by demanding that Ryan and Respondent D'Andrea discriminate against employees in violation of Section 8(a)(3) by discharging them based on their nonmembership in Respondent Union. We further find that, by acceding to Respondent Union's demand and discharging employees based solely on their lack of membership in Respondent Union, Respondent D'Andrea

[3] Goodman testified that 75 percent of Respondent Union's membership lived outside its geographic "jurisdiction," mostly in Philadelphia.

[4] The judge rested his finding in part on a letter from D'Andrea to Goodman stating that D'Andrea had "discharged members of Laborers' Local 332" and "hired men from your Laborers' Local 135" in order to comply with the collective-bargaining agreement. Contrary to the judge's finding, we think that this letter shows that membership, rather than residence, was the motivation for the discharges of the Local 332 members. Had residence location been the reason for the discharges, the letter would have so stated. By its concentration on membership to the exclusion of any reference to residence, the letter clearly shows the reason D'Andrea discharged Charging Party Brown was his membership in Local 332.

violated Section 8(a)(3) and (1) of the Act. *Elevator Constructors Local 16 (Westinghouse Elevator)*, 229 NLRB 439 (1977); *Carpenters Local 64 (Western Dry Wall)*, 204 NLRB 590 (1973); *Meat Cutters Local 576 (Westfield Supermarket)*, 201 NLRB 922 (1973); *J. Willis & Son Masonry*, 191 NLRB 872 (1971).

II. CASE 4–CB–4260

The complaint in this case alleges that Respondent Union violated Section 8(b)(1)(A) of the Act by disciplining four of its members—Roy Poorman, George Scott, Harold Coates, and Wilson Bradley—for refusing to engage in a strike called by Respondent Union against Corprew Construction Company, Inc. (Corprew) at a time when Respondent Union was obligated to refrain from engaging in this activity by virtue of a contractual no-strike agreement. During the course of the hearing, counsel for the General Counsel sought to amend the complaint to add a fifth alleged discriminatee—Randy Huggins. The judge denied the motion to so amend the complaint.[5]

Based in part on credibility resolutions, the judge found that Respondent Union violated Section 8(b)(1)(A) by bringing internal union charges against 13 of its members employed by Corprew, fining them, and compelling them to pay the assessed fines for refusing to engage in a strike that would have been violative of the contractual no-strike clause. We find merit to certain of Respondent Union's exceptions to these findings.[6] While we agree with the judge, for the reasons stated by him, that Respondent Union violated Section 8(b)(1)(A) as alleged in the complaint with respect to the four named discriminatees,[7] we find meritorious Respondent Union's argument that the judge improperly expanded the scope of the complaint beyond the four named discriminatees. Respondent Union correctly notes that the judge thus expanded the complaint without notice to it and without any attempt either by it or the General Counsel to litigate the cases of the other nine individuals. Hence, we shall modify the judge's conclusions, remedy, and recommended Order to delete all references to the nine individuals not named in the complaint.

III. CASES 4–CB–4204 AND 4–CB–4256

This portion of the consolidated complaint alleges that Respondent Union operated its hiring and referral hall[8] in a discriminatory fashion so as to penalize eight named employees by not registering them for referrals on its "out of work" list or simply refusing to refer them to available work, all because those employees engaged in internal union politics opposed to the incumbent slate of union officials. By this conduct Respondent Union is alleged to have violated Section 8(b)(1)(A) and (2) of the Act.

The judge concluded that Respondent Union had engaged in widespread and pervasive violations of Section 8(b)(1)(A) and (2) of the Act by discriminating against the eight named individuals in the operation of its hiring and referral hall. He found that Respondent Union had committed unfair labor practice violations in every instance in which other individuals were referred to work out of turn in preference to the eight named discriminatees, save for the few instances in which an employer requested a laborer with truly specialized skills or requested a named individual. The judge specifically identified about 80 instances in which other individuals were referred to jobs out of turn in preference to the named discriminatees and found that each out-of-turn referral violation Section 8(b)(1)(A). The judge further found that the record revealed "many other instances of similar violations," but left the question of how many times the eight discriminatees suffered discrimination to the compliance stage of the proceeding.

In its exceptions to these findings Respondent Union contends, inter alia, that (1) the judge made no findings to support his conclusion that it violated Section 8(b)(2); (2) the judge wrongly stated that it was required to keep written records and was bound by the contents of those records; (3) the judge denied due process to Respondent Union by refusing to allow the General Counsel to set forth

[5] No exceptions were filed to the judge's ruling.

[6] The judge inadvertently referred to employees "William Bradley" and "Rudy Huggins." Respondent Union's exceptions correctly note that those employees' correct names are Wilson Bradley and Randy Huggins. The judge also inadvertently referred to the employer as "Corpreu" rather than "Corprew." We correct the judge's decision accordingly.

[7] In affirming the judge's finding that Respondent Union violated Sec. 8(b)(1)(A) as alleged with respect to the four named discriminatees, we specifically agree with his subsidiary finding that Corprew's alleged delinquency in its payment of fringe benefit fund contributions was not the real reason Woodall instructed the discriminatees to leave the jobsite, but was a pretext asserted to mask the true motive. Perhaps the strongest evidence of pretext is the fact that Respondent Union neither followed its own normal procedures for enforcing signatory employers' benefit fund obligations nor mentioned the alleged delinquency in the internal union charges it filed against the discriminatees. As we agree with the judge that this portion of Respondent Union's defense is a pretext, we need not and do not pass on his dicta that even if the strike was called based on delinquent fund contributions the activity would still constitute an unfair labor practice.

[8] Respondent Union excepted to the judge's characterization that it operated a "hiring" hall as contrasted to a nonexclusive "referring" hall. As relevant to this case, however, the characterization of the hall is a distinction without a difference. Whatever label is placed on the hall does not alter the fact that Respondent Union may not legally discriminate against individuals based on its internal union politics. In any event we note that at least with respect to one employer—Bechtel Power Corporation—it is beyond dispute that a de facto exclusive hiring hall arrangement existed, as Bechtel's labor relations representative testified.

in the record during the hearing the specific instances of discriminatory referrals alleged to have been unlawful; and (4) the judge abdicated his fact-finding responsibilities by failing to detail all instances of discriminatory referrals, and some of his specific findings of discrimination are not supported by the record or are barred by Section 10(b).[9] We find certain of these contentions meritorious.

1. Although the judge failed to rationalize his conclusion that at least some of the out-of-turn referrals found discriminatory violated Section 8(b)(2) as well as Section 8(b)(1)(A), we note that the complaint alleged both 8(b)(2) and 8(b)(1)(A) violations based on Respondent Union's operation of its hiring hall. It is well established that discriminatory referrals from an exclusive hiring hall violate Section 8(b)(2). See *Electrical Workers IBEW Local 675 (S & M Electric)*, 223 NLRB 1499 (1976); *Plumbers Local 17 (FSM Mechanical)*, 224 NLRB 1262 (1976). Similarly, a union violates Section 8(b)(1)(A) when it refuses to refer individuals from a nonexclusive referral hall based on discriminatory reasons including (as here) internal union politics. *Plasterers Local 121 (ABC of Lafayette)*, 264 NLRB 192 (1982); *Teamsters Local 923 (Yellow Cab)*, 172 NLRB 2137 (1968). In either event the remedy for the discrimination is the same—full backpay. *Laborers Local 889 (Anthony Ferrante & Sons)*, 251 NLRB 1579 (1980); *Iron Workers Local 577 (Various Employers)*, 199 NLRB 37 (1972). See also *Iron Workers Local 118 (Pittsburgh Steel)*, 257 NLRB 564, 567–568 (1981). Under these circumstances, and as we agree that Respondent Union operated an exclusive hiring hall at least with respect to Bechtel Power Corporation,[10] we find no prejudicial error in the judge's failure to explicate the grounds for his conclusion that the out-of-turn referrals found to have been discriminatory violated Section 8(b)(2) of the Act.

2. Respondent Union may be correct in its contention that a union operating a hiring or referral hall is not required to keep written records concerning the operation of the hall. See *Laborers Local 394 (BCA of New Jersey)*, 247 NLRB 97 fn. 2 (1980). However, we need not and do not reach that issue in this case because here Respondent Union's own written rules and standards governing operation of its hiring hall at all times required that such written records be maintained.[11] A departure from established exclusive hiring hall procedures that results in a denial of employment to any applicant inherently encourages union membership and therefore violates Section 8(b)(1)(A) and (2) without regard to the presence of unlawful motivation. *Operating Engineers Local 406*, supra; *Plumbers Local 392 (Kaiser Engineers)*, 252 NLRB 417 (1980).

With respect to Respondent Union's contention that the judge erroneously held that it was bound by the contents of its written records without regard to oral testimony, we agree with it that, had the judge failed to admit oral testimony concerning either its referral practices or the circumstances of specific referrals, he would have committed reversible error. However, that is not what occurred in the instant case. Here the judge properly admitted and considered at length in his decision oral testimony concerning those matters. Having considered the testimony, the judge found that to the extent it was inconsistent with written documents entered into evidence the oral testimony was "utterly unconvincing." The judge further found that certain testimony offered by Respondent Union to explain its hiring hall operation was a "literal admission that this union simply ignored its hiring hall system and that its authorized agents, in control of distribution of jobs, satisfied their whims and prejudices in total disregard of Board law." We agree with these findings.

3. Near the conclusion of his case-in-chief, the General Counsel attempted to place on the record examples of the specific instances of discriminatory referrals he alleged to be unlawful. Respondent Union's exceptions assert that the judge refused to permit the General Counsel to do so and that the refusal denied it due process of law. We find these assertions to be without merit. While the judge initially blocked the General Counsel's effort to question witness Goodman about certain out-of-turn referrals, the judge later relented and permitted the line of questioning. The result was that specific examples of discriminatory referral practices were placed on the record with respect to each of the eight named discriminatees. In any event, we find that Respondent Union, as custodian of all hiring hall records, had a more than adequate opportunity to prepare its defense from those records between the date the complaint issued and the date of the hearing.[12]

[9] Sec. 10(b) provides, inter alia, that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board."

[10] See fn. 8, supra.

[11] We note in this regard that a significant change in referral procedures without timely notice to affected individuals would constitute a violation of Sec. 8(b)(1)(A). *Operating Engineers Local 406 (Ford Construction)*, 262 NLRB 50, 51 (1982).

[12] We note that "the burden of negating the General Counsel's *prima facie* case of discrimination in hiring referrals falls upon Respondent as the sole custodian of the hiring hall records." *Carpenters (Catalytic, Inc.)*, 267 NLRB 1223, 1229 fn. 13 (1983), quoting *Seafarers Atlantic District (American Barge)*, 244 NLRB 641, 642 (1979).

4. Respondent Union further asserts that the examples of specific instances of discrimination cited by the judge are unsupported by the record and/or barred by Section 10(b) of the Act. We agree with Respondent Union that certain of the examples cited by the judge are barred by Section 10(b), but reject as totally groundless its assertion that the record does not support any findings of discriminatory referrals. To the contrary, we specifically agree with the judge's finding that the record establishes that Respondent Union engaged in a pervasive and continuing pattern of discriminatory and unlawful conduct directed against the named discriminatees because of their internal union politics by failing and refusing to refer the named discriminatees in proper order from its hiring and referral hall. The evidence of that unlawful conduct is clear and overwhelming as set forth in the judge's decision. The evidence will not be repeated here.

We also do not agree with Respondent Union that in the circumstances of this case the judge erred by not enumerating all of the specific instances of unlawful bypassing of the named discriminatees in reprisal for their intraunion political activities. In *NLRB v. Iron Workers Local 483*, 672 F.2d 1159 (3d Cir. 1982), the court explained that, in "exceptional cases" in which a specific finding of "widespread and pervasive" discrimination makes particularized proof of each instance of discriminatory conduct impractical and unnecessary, such a procedure is warranted. We find that this is such a case. While the complaint alleges discrimination in job referrals directed against only eight individuals, the discrimination continued for many months and involved bypassing those eight individuals in favor of all other persons registering for job referrals. Literally hundreds, if not thousands, of discriminatory referrals took place within the time period framed by the applicable 10(b) dates and the date of the hearing in this proceeding.[13] Respondent Union's hiring hall records for this period are confusing, incomplete, and in many cases illegible, and in many other cases those records simply were not utilized in making referrals. Even a cursory review of those records, however, makes it patently apparent that each discriminatee was on many occasions unlawfully bypassed by Respondent Union when it made referrals from its exclusive hiring hall and nonexclusive job-referral system. The violations of Section 8(b)(1)(A) and (2) we find here are not dependent on the precise number of individuals who were referred out of turn in preference to the named discriminatees. Rather, as in a more "routine" unlawful failure to hire case, we simply find that all out-of-turn job referrals within the 10(b) period were unlawful. The precise number of individuals given such preference, the dates of their employment, their rates of pay, and related issues are backpay matters properly left to the compliance portion of this proceeding.

A brief summary of our findings with respect to each discriminatee follows:

Wilson Bradley—Bradley registered for referral in June or July 1980 and reregistered in February, June, and July 1981. He was not referred until 21 August 1981. All out-of-turn referrals to Bechtel between 5 December 1980 and 21 August 1981 were violative of Section 8(b)(1)(A) and (2), and all out-of-turn referrals to other employers between those dates were violative of Section 8(b)(1)(A).[14]

Andrew Huggins—A. Huggins registered for referral in November or December 1980, but prior to 3 December 1980. He was not referred until 9 April 1981. All out-of-turn referrals to Bechtel between 5 December 1980 and 9 April 1981 were violative of Section 8(b)(1)(A) and (2), and all out-of-turn referrals to other employers between those dates were violative of Section 8(b)(1)(A).

George Scott—Scott registered for referral in February or March 1980 and reregistered 24 November 1981. His name was improperly struck from the referral book in April 1980, but as this action was well before the 10(b) period no violation may be found based on this conduct. Following his reregistration in November 1981, Scott was not referred to available work at any time through at least April 1982 according to the most recent hiring hall records in evidence. All out-of-turn referrals to Bechtel after 24 November 1981 were violative of Section 8(b)(1)(A) and (2), and all out-of-turn referrals to other employers after that date were violative of Section 8(b)(1)(A).

Randy Huggins—R. Huggins registered for referral 27 February 1981. No attempt to refer him was made until 19 May 1981. All out-of-turn referrals to Bechtel between 27 February and 19 May 1981 were violative of Section 8(b)(1)(A) and (2), and all out-of-turn referrals to other employers between those dates were violative of Section 8(b)(1)(A).

Harold Coates—Coates registered for referral in December 1980 or January 1981 and reregistered 6 July and 24 November 1981 and 10 February 1982.

[13] The 10(b) date for all of the named discriminatees except Andrew Huggins is 5 December 1980. The 10(b) date applicable to Andrew Huggins is 10 September 1980. With respect to discriminatees Fred Gray and Rita McMillan, however, the complaint alleges discrimination only since 1 March 1981.

[14] No violations of the Act are found with respect to any of the discriminatees in those instances where the out-of-turn referral was based on a contractor's request for a named individual or an individual with specialized skills possessed only by a few individuals and not by the discriminatees.

He was referred on 17 June and 13 July 1981 and again in February 1982. All out-of-turn referrals to Bechtel between at least 31 January and 17 June 1981 were violative of Section 8(b)(1)(A) and (2), and all out-of-turn referrals to other employers between those dates were violative of Section 8(b)(1)(A). All out-of-turn referrals between 6 and 13 July 1981 and 24 November 1981 and at least 10 February 1982 similarly were violative of the Act.

Roy Poorman—Poorman registered for referral 5 March 1980 and reregistered on 23 June 1981 and 23 February 1982. He was referred on 13 July 1981 to a job which lasted only 2 days. Under the hiring and referral hall rules his name should not have been stricken since the job lasted only 2 days, but it was so stricken and Poorman did not receive another referral. All out-of-turn referrals to Bechtel between 5 December 1980 and 13 July 1981 and since 16 July 1981 were violative of Section 8(b)(1)(A) and (2), and all out-of-turn referrals to other employers during those times were violative of Section 8(b)(1)(A).

Fred Gray—Gray registered for referral 24 April 1981 and reregistered 12 June 1981 and 5 March 1982. His name was properly stricken from the register about 13 July 1981 and he was never referred. All out-of-turn referrals to employers other than Bechtel[15] between 24 April and 24 June 1981 and since 5 March 1982 were violative of Section 8(b)(1)(A).

Rita McMillan—McMillan registered for referral 24 April 1981 and reregistered 12 June, 5 August, and 13 October 1981 and 5 March 1982. She was first called for referral 24 June 1981 and thereafter was referred 8 July, 26 August, and 19 November 1981. All out-of-turn referrals to employers other than Bechtel[16] between 24 April and 24 June, 5 and 26 August, and 13 October and 19 November 1981 and since 5 March 1982 were violative of Section 8(b)(1)(A).

CONCLUSIONS OF LAW

1. By maintaining and operating a de facto exclusive hiring hall and referral system for the referral of employees to Bechtel Power Corporation in a discriminatory manner since about 10 September 1980, Respondent Union violated Section 8(b)(1)(A) and (2) of the Act.

2. By discriminatorily failing and refusing to refer Wilson Bradley, Andrew Huggins, Randy Huggins, Harold Coates, and Roy Poorman to jobs through its exclusive referral system in retaliation for their having engaged in protected concerted activities, Respondent Union violated Section 8(b)(1)(A) and (2) of the Act.

3. By discriminatorily failing and refusing to refer Wilson Bradley, Andrew Huggins, Randy Huggins, George Scott, Harold Coates, Roy Poorman, Fred Gray, and Rita McMillan to jobs through its nonexclusive referral system in retaliation for their having engaged in protected concerted activities, Respondent Union violated Section 8(b)(1)(A) of the Act.

4. By threatening to fine and fining employees and bringing or threatening to bring internal union charges against them for refusing to engage in a strike action that was in violation of its collective-bargaining agreement with the employer of those employees, Respondent Union violated Section 8(b)(1)(A) of the Act.

5. By attempting to cause and causing Ryan and Respondent D'Andrea respectively to discharge employees Stephen Michael Deitz and Benjamin Brown Jr. in violation of Section 8(a)(3) based on their lack of membership in it, Respondent Union violated Section 8(b)(1)(A) and (2) of the Act.

6. By discharging its employee Benjamin Brown, Jr. because of his nonmembership in Respondent Union, Respondent D'Andrea violated Section 8(a)(3) and (1) of the Act.

REMEDY

Having found that Respondent Union and Respondent D'Andrea have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that Respondent Union violated Section 8(b)(1)(A) and (2) by causing Respondent D'Andrea to discharge, and that Respondent D'Andrea violated Section 8(a)(3) and (1) by discharging, Benjamin Brown Jr. based on his lack of membership in Respondent Union. To remedy this conduct Respondent D'Andrea must offer Brown reinstatement and, jointly and severally with Respondent Union, make him whole for any loss of earnings and other benefits he may have suffered by reason of the discrimination against him from the date of the Respondents' unlawful conduct until he obtains the employment that he would have had were it not for the Respondents' unlawful conduct, substantially equivalent employment with Respondent D'Andrea, or substantially equivalent employment elsewhere, less net interim earnings. We also have found that Respondent Union violated Section 8(b)(1)(A) and (2) by causing Ryan Concrete and Construction Co. to discharge employee Stephen Michael Deitz based on his lack of

[15] Gray previously had been terminated by Bechtel for cause and was ineligible for rehire.

[16] McMillan previously had been terminated by Bechtel for cause and was ineligible for rehire.

membership in Respondent Union. To remedy this conduct, Respondent Union must notify Ryan in writing, with copies to Deitz, that it has no objection to his hiring or employment, and affirmatively request Ryan to hire Deitz for the employment that he would have had were it not for Respondent Union's unlawful conduct or for substantially equivalent employment. Finally, Respondent Union must make Deitz whole for any loss of pay or other benefits he may have suffered by reason of the discrimination against him in the manner set forth above.

We have further found that Respondent Union violated Section 8(b)(1)(A) by illegally fining four employees who refused to engage in a work stoppage called by it against Corprew Construction Co. at a time when Respondent Union was obligated to refrain from this activity by a contractual no-strike clause. As it appears that at least some of these fines have been paid, Respondent Union must reimburse the four members for any payments that were made, with interest as computed in *Florida Steel Corp.*, 231 NLRB 651 (1977).

We have further found that Respondent Union violated Section 8(b)(1)(A) or Section 8(b)(1)(A) and (2) by discriminatorily failing and refusing to refer to available jobs through its hiring and referral hall system named discriminatees Wilson Bradley, Andrew Huggins, Randy Huggins, George Scott, Harold Coates, Roy Poorman, Fred Gray, and Rita McMillan. To remedy this conduct Respondent Union must make each discriminatee whole by payment to him or her of a sum of money equal to that which he or she normally would have earned as wages from the date of the discrimination until the time Respondent Union ceases its unlawful conduct by properly referring him or her to employment, less net interim earnings.

We additionally shall require that Respondent Union keep and retain for a period of 2 years permanent written records of its hiring and referral hall operations and make those available to the Regional Director on request. We also shall order Respondent Union to submit to the Regional Director four quarterly reports concerning the employment of all the named discriminatees. Further, we shall require Respondent Union for 2 years to place its hiring and referral registers on a table or ledge in its hiring hall for easy access and inspection by the applicants on completion of each day's entries in the registers.

All backpay due under the terms of this Order shall be computed on a quarterly basis as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *Florida Steel*, supra. See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

ORDER

A. The National Labor Relations Board orders that the Respondent, P. D'Andrea, Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against Benjamin Brown, Jr. or any other employee because of his nonmembership in Laborers Local 135 or any other labor organization, except as authorized in Section 8(a)(3) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Benjamin Brown, Jr. immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharge and notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Philadelphia office and at all jobsites within the territorial jurisdiction of Laborers Local 135 copies of the attached notice marked "Appendix A."[17] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the

[17] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. The National Labor Relations Board orders that the Respondent, Laborers Local No. 135, Norristown, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Enforcing or maintaining any rule under which priority in employment is based on membership in Respondent Union.

(b) Causing or attempting to cause P. D'Andrea, Inc., Ryan Concrete and Construction Co., Inc., or any other employer to discharge Benjamin Brown Jr., Stephen Michael Deitz, or any other employee because of his nonmembership in Respondent Union, except as authorized in Section 8(a)(3) of the Act.

(c) Assessing or threatening to assess fines or other discipline, or bringing or threatening to bring internal union charges, against members for refusing to engage in illegal strike actions.

(d) Operating its exclusive hiring hall and nonexclusive job-referral system without objective criteria or standards and in a discriminatory manner.

(e) Failing and refusing to refer employees to jobs through its exclusive hiring hall and nonexclusive job-referral system based on their activities protected by Section 7 of the Act, thereby causing or attempting to cause employers to deny employment to those employees in violation of Section 8(a)(3) and (1) of the Act.

(f) In any other manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify P. D'Andrea, Inc., in writing, with copies to Benjamin Brown, Jr., that it has no objection to the hiring or employment of Brown and request D'Andrea to hire Brown for the employment that he would have had were it not for the Respondent's unlawful conduct or for substantially equivalent employment.

(b) Notify Ryan Concrete Co. in writing, with copies to Stephen Michael Deitz, that it has no objection to the hiring or employment of Deitz and request Ryan to hire Deitz for the employment that he would have had were it not for the Respondent's unlawful conduct or for substantially equivalent employment.

(c) Make whole Benjamin Brown, Jr., and Stephen Michael Deitz for any loss of pay or other benefits suffered by reason of the discrimination against them in the manner set forth in the remedy section of this decision.

(d) Remove from its files, and ask the Employers to remove from the Employers' files, any reference to the unlawful discharges and notify the employees in writing that it has done so and that it will not use the discharges against them in any way.

(e) Rescind and expunge from its records the fines and all other discipline imposed on Roy Poorman, George Scott, Harold Coates, and Wilson Bradley for having refused to engage in an illegal work stoppage against Corprew Construction Co. and inform each of them in writing that it has done so.

(f) Refund to Roy Poorman, George Scott, Harold Coates, and Wilson Bradley any portion of the fines that they may have paid in the manner set forth in the remedy section of this decision.

(g) Make whole Wilson Bradley, Andrew Huggins, Randy Huggins, George Scott, Harold Coates, Roy Poorman, Fred Gray, and Rita McMillan for any loss of pay or other benefits suffered by reason of the discrimination against them in the manner set forth in the remedy section of this decision.

(h) Preserve and, on request, make available to the Board or its agents for examination and copying, all records, reports, work lists, and all other documents necessary to analyze the amount of backpay due under the terms of this Order.

(i) Maintain and operate its exclusive hiring and nonexclusive job-referral system in a nondiscriminatory manner based on objective criteria and standards.

(j) Keep and retain for 2 years from the date of this decision permanent written records of its hiring and referral operations that will be adequate to disclose fully the basis on which each referral is made and make those records available to the Regional Director on request.

(k) Submit four quarterly reports to the Regional Director, due 10 days after the close of each calendar quarter subsequent to the date of this decision, concerning the employment of the eight named discriminatees. The reports must include the date and number of job applications made to Respondent Union, the date and number of actual job referrals made by Respondent Union, and the length of employment during the quarter.

(l) For the period of 2 years from the date of this decision place the hiring and referral registers on a table or ledge in its hiring hall for easy access and inspection by the applicants as a matter of right on completion of each day's entries in such registers.

(m) Post at all places where notices to members or applicants for referral are posted copies of the

attached notice marked "Appendix B."[18] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(n) Sign and return to the Regional Director sufficient copies of the notice for posting by all employers utilizing its hiring and referral hall, if willing, at all places where notices to employees are customarily posted.

(o) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[18] See fn. 17 supra.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you because you are not members of Laborers Local 135 or any other union, except as authorized in Section 8(a)(3) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Benjamin Brown, Jr. immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and WE WILL jointly and severally with Laborers Local 135 make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify him that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

P. D'ANDREA, INC.

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT maintain or enforce any rule providing that any employer must give preference in employment to members of Laborers Local 135.

WE WILL NOT cause or attempt to cause P. D'Andrea, Inc., Ryan Concrete and Construction Co., or any other employer to discharge Benjamin Brown, Jr., Stephen Michael Deitz, or any other employee because of his lack of membership in Laborers Local 135, except as authorized in Section 8(a)(3) of the Act.

WE WILL NOT assess or threaten to assess fines or other discipline, or bring or threaten to bring internal union charges, against our members for refusing to engage in illegal strike actions.

WE WILL NOT operate our exclusive hiring hall and nonexclusive job-referral system in such a manner as to select and refer applicants for jobs on the basis of subjective criteria.

WE WILL NOT maintain or operate our exclusive hiring hall and nonexclusive job-referral system in a discriminatory manner or in retalitation against members based on their internal union politics or other protected concerted activities.

WE WILL NOT refuse to refer Wilson Bradley, Andrew Huggins, Randy Huggins, George Scott, Harold Coates, Roy Poorman, Fred Gray, and Rita McMillan, or any other individual, to available jobs

in retaliation for their protected activities in opposition to our officials and their actions.

WE WILL NOT in any other manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify P. D'Andrea, Inc., and Ryan Concrete and Construction Co. that we have no objection to their hiring of Benjamin Brown, Jr., and Stephen Michael Deitz, respectively, and WE WILL request those employers to hire those employees for the jobs they would have had were it not for our unlawful conduct or for substantially equivalent employment.

WE WILL make whole Benjamin Brown, Jr., and Stephen Michael Deitz for losses they suffered as a result of the discrimination against them, with interest.

WE WILL notify each of them that we have removed from our files, and have asked the Employer to remove from the Employer's files, any reference to his discharge and that we will not use the discharge against him in any way.

WE WILL rescind the fines and all other discipline imposed on Roy Poorman, George Scott, Harold Coates, and Wilson Bradley for their refusal to engage in an illegal strike against Corprew Construction Co., WE WILL expunge from our records all references to these actions, and WE WILL inform each of these employees in writing that we have done so.

WE WILL refund to those employees any portion of the fines they may have paid, with interest.

WE WILL operate our exclusive hiring hall and nonexclusive job-referral system in a nondiscriminatory manner based on objective criteria and standards.

WE WILL keep for 2 years permanent written records of our hiring and referral operations that will disclose fully the basis on which each referral was made and make these records available to the Regional Director on request.

WE WILL for 2 years place the referral registers on a table or ledge in our hiring hall for easy access and inspection by all applicants.

WE WILL make whole Wilson Bradley, Andrew Huggins, Randy Huggins, George Scott, Harold Coates, Roy Poorman, Fred Gray, and Rita McMillan for any loss of earnings they may have suffered by reason of our discrimination against them, with interest.

WE WILL submit four quarterly reports to the Regional Director concerning the employment of each of the above-named employees.

LABORERS LOCAL NO. 135

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge. The hearing in this consolidated proceeding was held on 11 separate days, 2 in January, 4 in April, and 5 in June, 1982, at Philadelphia, Pennsylvania. Five charges were filed against Laborers Local No. 135, (the Union or the Respondent Union), three of them by individuals—Andrew Huggins, Benjamin Brown and Stephen Deitz—two by Judith B. Chomsky, an attorney. A sixth charge was filed by Benjamin Brown against P. D'Andrea, (the Respondent Employer). On the basis of these charges, the General Counsel issued five separate complaints, one against Local 135 on April 30, 1981 (Case 4–CB–4204), one against Local 135 on July 15, 1981 (Case 4–CB–4254), one against Local 135 on July 28, 1981 (Case 4–CB–4260), one against P. D'Andrea and Local 135 on August 28, 1981 (Cases 4–CA–12348 and 4–CB–4271), and the last against Local 135 on October 20, 1981 (Case 4–CB–4311). Briefs were filed on behalf of the General Counsel, Local 135, and two of the Charging Parties, Chomsky and Deitz.

On the entire record and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. BOARD JURISDICTION

The main Respondent here is the Union, Local 135. There is no real reason for detailing any commerce facts to justify Board jurisdiction over this Union if only because one of the contractor employers involved in the case is the Bechtel Corporation, over which the Board has asserted jurisdiction a number of times. Another construction company involved is the Corpreu Construction Company, Inc. As to that Company, one of the complaints alleges it annually receives supplies valued in excess of $50,000 from sources outside the Commonwealth of Pennsylvania where it does business, and that allegation is not contradicted in any answer. Therefore, I find that employers with which the Respondent Union negotiates and deals are engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION

I find that Laborers Local No. 135 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Case in Brief*

There are three distinct parts to this case, in each of which Laborers Local 135 is the essential Respondent. Like all other local unions in the construction industry this Local operates over a jurisdictional area, with its jurisdictional area centering in and around Norristown, Pennsylvania, not far from the city of Philadelphia. It runs a hiring hall where requests for laborers are received from contractors who have projects within its jurisdiction. The referrals from that hiring hall—where in-

dividual members sign a register when looking for work—are controlled by the officers of the Union, chief in charge during the years 1980 and 1981 being its business manager William Goodman and its president Daniel Woodall.

Many contractor employers who normally do business in the jurisdictions of other Laborers locals in adjacent areas sometimes take jobs here and bring their longstanding employees from outside to work in the jurisdiction of Local 135. One part of this case alleged that Local 135 caused two out-of-town contractors—Ryan Concrete Construction Co. and P. D'Andrea, Inc.—to discharge certain employees and to replace them with members of Local 135. By such conduct Local 135 is said to have violated Section 8(b)(2) of the Act. Only D'Andrea is named a respondent here, and it is alleged to have violated Section 8(a)(3) of the Act by conceding to the Union's illegal demands. In defense the Union contends that it did no more than request compliance with the collective-bargaining agreement it had with these two contractors, which bound them to employ a "fair representation" of local laborers when working in the jurisdiction of Local 135.

The second part of the case alleges that the Union brought internal charges against several of its members, and made them pay fines as a result, because they refused orders to engage in a strike which would have been in violation of the union contract then in effect, this said to be a violation of Section 8(b)(1)(A) of the Act. In the face of the direct proof shown in the written charges filed and the written decision of the Union's trial board, the defense to this part of the case is not really intelligible.

The third and the last part of the case alleges that the union agents in charge of the hiring hall discriminated against a certain group of its members—eight of them—by deliberately failing to refer them to jobs in regular rotation because they tried, several times but without success, to unseat and replace the incumbent officers in successive internal union elections. As best I can understand the defense to this allegation—spread over more than 1000 pages of repetitive testimony by the two principal union witnesses, the president and the business manager it is that the contemporaneous documents, the sign-in books always maintained in the union hall, which show without question that there was continuing discrimination against these employees, must be disregarded because the officers in charge, who did the referring, in their minds always did the right thing, and always complied with the applicable contract and the applicable law. More on that later.

B. *Fair Representation*

The collective-bargaining agreement in effect between Local 135 and Ryan Construction Company and D'Andrea Company contained the following provision:

> Employer, when doing work in any of the counties covered as aforesaid and serviced by any Local Union of the Laborers District Council, reserves the right to use his or its key employees, provided, nevertheless, that each such Employer shall endeavor to employ on each job a fair representation of employees from the geographical area in which the work is located, subject to the provisions of Article III hereof, and who qualify for such employment.

The Board has held, as the General Counsel here concedes, that such an agreement between an employer and a union is perfectly proper under the statute. *Plumbers Local 337 (Townsend & Bottom)*, 147 NLRB 929 (1964). The question to be decided here is whether, when Union President Woodall and Business Manager Goodman of Local 135 asked the officers of these two Companies to hire members of their Local, releasing others if necessary, they were speaking about replacing members of one union with members of another union, or whether they were speaking about geographic, territorial, or jurisdictional balancing to achieve the contractually agreed-upon fair representation. Albert Tamburrino of Ryan Construction and Louis D'Andrea testified about their pertinent conversations with Goodman and Woodall on this matter. The union agents also testified. The General Counsel also called Benjamin Brown, who was fired as a result by D'Andrea, and Stephen Deitz, who was fired by Tamburrino. Goodman and Woodall, who also testified at unbelievable length about the hiring hall aspect of this case, were not reliable witnesses at all in my opinion. The two laborers who were released felt they had been hurt because of the preference given to members of another union, and therefore spoke as much in conclusionary words as directly concerning facts. In my opinion, therefore, the more reliable testimony as to what really happened came from D'Andrea and Tamburrino, plus the written correspondence, unquestionable evidence, that was exchanged. All things considered I find that the affirmative burden of proving an unfair labor practice on this aspect of the case has not been convincingly carried.

What must be kept in mind first and foremost is that in common union parlance jurisdiction, geographic area, and places of residence are often referred to interchangeably with local union membership. After all, normally this is what distinguishes one local union in an international organization from another. Tamburrino testified that most of his employees on this one project were members of Laborers Local 332, and lived elsewhere. At one point in his testimony he quoted Woodall as saying "that we should have 50 and 50; 50 percent of our normal regular employees that had followed us from job to job, and 50 percent of the Laborers' Local 135." As D'Andrea testified: "Just the question was brought up that, you know, the point was brought up that I had a little too many 332 men on the job." And Woodall himself, while contending that he had only intended to press for geographic distribution, did admit that Tamburrino once said he would agree to hire men "of our local." Viewed in isolation, such talk goes to membership, not geographic considerations.

But there was more in the conversations that took place. From Tamburrino's testimony: "He [Woodall] claimed that in that contract—well, they claimed that fair representation to him was 50 percent, but we couldn't find anything afterwards where it stated 50 percent." But reference to the contract of necessity meant

reference to geography, and not membership. Tamburrino admitted he had no knowledge of where any of his employees lived. Again, by Tamburrino:

> Q. You testified earlier that Mr. Woodall came on the job and the issue most talked about was the fair representation issue, am I correct?
> A. Correct.

From D'Andrea's testimony: "I laid him off to make room for—to make equal representation on that particular job." With this the witness then admitted that the Union never threatened him at all, but only said it would "file a grievance according to the contract," and "that I would abide by their ruling on the said article." Talk of grievance means contract enforcement; a union does not speak of filing a grievance to achieve preference for its members over members of a competing union. Continuing from D'Andrea's testimony:

> Q. What is your interpretation of the contract as far as the—
> A. My interpretation was that equal—that the next man hired should be a man from that area, from that area union.
> Q. The geographical area?
> A. That's correct.

D'Andrea also admitted that he later received a letter from Union President Goodman reading:

> Per our conversation, I am enclosing a Building and General Construction Agreement manual. Please note page 3; Article II, Section 1—Territorial Jurisdiction. If you have any questions, please do not hesitate to contact me at the above listed telephone number.

Two days later D'Andrea responded by writing to Goodman:

> We are writing to confirm that on or about June 30, 1981, we discharged members of Laborers' Local 332 from our employ at the Abraham and Strauss jobsite in Willow Grove, Penna. and hired men from your Laborers' Local 135, which has jurisdiction in that area, in order to comply with Article II, Section 1 of our agreement with the Laborers' District Council of Philadelphia and vicinity.

All this fits, of course, with Woodall's testimony that when speaking to Tamburrino he also discussed the contract with him. There can be no clearer proof than these two letters exchanged to show that what really underlay the problem Local 135 brought to both these employers was their failure to live up to the geographic requirements of their union contract. The General Counsel contends that this revealing correspondence must be ignored because it was exchanged after the dismissal of Brown and Deitz. But how many times has the General Counsel argued that postdischarge evidence of illegal intent by an employer serves retroactively to prove an unlawful discharge. I shall recommend dismissal of the complaints in Cases 4–CA–12348, 4–CB–4271, and 4–CB–4311.

C. *The Corpreu Events*

Corpreu Construction Co., a contractor who uses laborers among other employees, started work on a project in the jurisdiction of Local 135 in the spring of 1980. When the officers of Local 135 learned of this activity they communicated with the Employer and the parties entered into a binding contractual agreement, the Company signing the CBCA area contract which bound Local 135 as well. A critical provision in that agreement pertinent to this case reads:

> No dispute, disagreement or question shall result in any strike, slowdown, stoppage, abandonment of the work, or lockout, pending the completion of all procedures, including arbitration provided for in this Article XII, Section 1.

With this contract in effect Corpreu then hired additional members of Local 135.

During May and early June 1980 the job was shut down several times because of disputes between Corpreu, as subcontractor, and the general contractor on the project. Finally, on June 17 Corpreu again laid off all the Local 135 men on the job. At this point a disagreement developed between Corpreu and the officers of Local 135 over the Company's method of laying these men off, the Union saying something had been done wrong with the way the steward on the job had been laid off. Later, almost the same day, Corpreu did call back the Local 135 men but none of the prior employees was willing to return.

Needing laborers on the job the Company then hired other members of Local 135 directly, that is, without going through the hiring hall. It was an accepted practice by contractors working in the jurisdiction of this Local, including all those bound by the collective-bargaining agreement here involved, to hire off the street, without the necessity of first clearing with the hiring hall, whenever they so chose. This fact is not disputed by any of the parties in this proceeding. On June 19 Corpreu hired Coates, a union member; in the following several days it took on a number of other Local 135 members, including George Scott, Roy Poorman, William Bradley, and Rudy Huggins. All these laborers continued to work until sometime during the first week in August, when once again because of a dispute with its general contractor Corpreu ceased work on this project, this time with finality.

Several of these Local 135 members testified that starting shortly after June 19 and continuing for some days thereafter, Woodall, the union president, came to the jobsite and told them to stop work. There is no real reason for belaboring in detail their testimony on the precise fact that Woodall kept telling them to walk off the job, for the Union's brief literally admits that fact. It speaks of these men "knowingly disregarding the request and directive of an authorized Field Agent of Local 135 who requested the men not to return to work," and states they "failed and refused to leave the jobsite." Coates testified that Woodall told him, "This job is down. You [are] going to have to get off the job. . . .

[I]f I stayed there I was going to be suspended or kicked out of the union" Sometime later Woodall was back with James, another field agent of the Union. They said, still according to Coates: "[T]he job is still down, you have to get off the job." Scott testified that the very first day he arrived at work Woodall came and said: "You know you are not supposed to be on this job." Scott disputed the assertion, and came back with: "If the job is down, all you have to do is put up a picket line." To this Woodall answered: "Well, I am not going to put up a picket line. I told you it is down and that is enough." Scott, too, said Woodall repeated this order several times on later days. Poorman quoted Woodall the same way. From the testimony of Ervin Foster, another Local 135 member then on the job: "He [Woodall] told us we are to stop work because this is a union affair."

Among the defense contentions advanced by the Union to this portion of the case is the conclusionary assertion made by Woodall as a witness that the Union "did not" cause or ask these men to strike. Recalling that employee Scott had told him to put up a picket line, Woodall said his answer was he could not do that because "it would be illegal." He did admit telling the men to "not work," "'You don't have to leave right now, but I would appreciate it if you just didn't come back '. . . I said, 'No, you are not being knocked off now. What I'm asking is that you show support by not reporting back to work tomorrow.'" Such a charade with words hardly does credit to the witness. But what more than anything else completely destroys this man's credibility is his testimony about the internal union charge he later filed against these men. He wrote the charge and signed it, accusing the men of wrongfully working in place of a fellow union member; he was present and testified at the trial board hearing that followed. Yet he insisted as a witness here that he never saw the decision of the trial board, adverse to the employees he had personally accused of misconduct, which was received in evidence. Woodall stands as a completely discredited witness in this case.

The Union's trial board decision held the accused employees guilty of wrongdoing because they "did work for Corpreu, Incorporated contrary to union instructions." The members were fined various amounts ranging from $50 to $350. It appears that most, if not all of them, have paid that fine.

Applicable law is clear. A union may not discipline its members for refusing to engage in an illegal strike in violation of a contractually agreed-upon no-strike clause. I find that is exactly what happened in the case at bar. *Mine Workers Local 12419, (National Grinding)*, 176 NLRB 628 (1969). I find that, by bringing internal charges against all these men, by fining them as a result, and by compelling them to pay the fine so assessed, Local 135, a Respondent here, violated Section 8(b)(1)(A) of the statute.

Local 135 must be ordered to reimburse each and everyone of those members who were fined by the trial board and who in fact paid the money, plus interest.

I find no merit in any of the other defenses articulated at the hearing. The trial board finding was issued on August 18, 1980. Poorman, one of the men fined, appealed that decision on behalf of all the other employees involved to the International Union. On February 20, 1981, the International upheld the decision of the trial board, and on April 28, 1981, Local 135 advised each of the employees by letter of this final decision and their obligation now to pay the fines. The pertinent charge was filed on June 15, 1981. The Union now asks dismissal of this part of the case on the ground that the 6-month-limitation set out in the statute so requires. The Board has held that, with respect to internal union discipline against members, the 6-month time period in which a charge may be filed does not commence until internal union appeals made by aggrieved members under the Union's appeal procedures had been exhausted. *Laborers Local 383 (Chanen Construction)*, 221 NLRB 1283 (1975).

There came a time when it was discovered that the Corpreu Company was delinquent in its payment of health and welfare benefits, as the contract called for, on behalf of these employees. Some witnesses recalled that, a number of weeks after Woodall started telling them to leave the job, he did tell them of such failure to pay the health and welfare benefits. As soon as employee Coates learned this, he spoke to the owner about it. Corpreu gave him a check for the amount due and later that same day Coates delivered it to the union fund's office. He told Woodall what he had done but the union president continued with his demand that the employees quit work. At the hearing the Respondent Union tried to enmesh that fact with the real pressure the union agents were putting on the employees all along, i.e., to strike because the Company had somehow displeased the Union in the way it had laid off a certain union steward. It will not do as a defense here. Even if the Union's sole reason for punishing these people was based on a concern about the health and welfare payments, its activity would still constitute an unfair labor practice. But I do not reach that question in this case. The fact is Woodall's repeated demands that the men strike was not based on that subject at all.

The General Counsel also makes a tangential argument which I think is not warranted in this case. As will appear below, a number of these employees—Coates, Poorman, Scott, etc.—engaged in a campaign over several years to unseat the incumbent officers of the Union, including Woodall, the president, and Goodman, the business manager. By the time of the Corpreu events such activities had generated very extensive internal union discord. The General Counsel asserts that an additional reason why Woodall brought these charges against the Corpreu employees was in retaliation for their activities the union election process. My finding of an unfair labor practice by the Union in this situation does not rest on that assertion.

D. *Violations of Section 8(b)(1)(A)*

Every 3 years a regular election for officers is held among the approximately 1100 members of Local 135. One such election took place in June 1978. William Goodman had been made business manager in 1977 and Woodall was already president then. A competing group was formed and ran against the incumbents in 1978.

Poorman was the leading activist among these so much so that the new group came to be called the Poorman slate. Among the seven or eight who ran for various offices, some, including Poorman, had become members of Local 135 during the early 1970s, transferring their membership from Laborers Local 332 in a nearby area. The officeholders, headed by Goodman, won all the elected positions and continued in office.

Alleging that Goodman and his group had engaged in impropriety, Poorman, assisted by Coates, Scott, and some others, appealed to the Laborers International Union to have the 1978 election set aside. The International refused to do that. The same group then turned to the Labor Department which found merit in their complaint and a Federal district court proceeding was instituted. In mid-1980 the Federal district court set aside the results of the 1978 election and ordered that another be held. It took place in January 1981. Again Poorman and his group ran against the incumbents and lost.

In June 1981 the regular every 3 years election was held, and again the so-called dissidents, running for various union officers, failed to unseat Goodman and his colleagues. Together with Woodall and his other intimate group these men continued to run the affairs of Local 135.

The complaint names eight of the foremost activists in this continuing movement to remove the incumbents and take controlling office of the Union. It alleges that, starting in 1978 and continuing into the 1981 election, Goodman, Woodall, and others of the inner established group threatened to deny employment to the named dissidents in the operation of the hiring hall system over which they had absolute control. It also alleges that Goodman and his fellow officers in fact did, many times, ignore the referral book which the dissidents kept signing, and referred other members of the Union out of turn when contractors called for men. This deliberate discrimination by them is called an illegal operation of the hiring hall, the use of power to allot work among the union members as a form of retaliation against Poorman and his group in punishment for trying to unseat the competitors in the successive union elections.

Two basic questions of fact must be decided on this record. (1) Did the Union ignore the signed referral book and refer members out of turn, and therefore in truth deny proper employment to the dissident members? (2) If in fact it did that, does the evidence prove affirmatively that the reason was to punish those members for having tried to win union offices against the officers who have charge of, and do control, the referral system?

That the eight members involved were active in the campaign to remove the business manager and the president from office is undisputed. Poorman ran for business manager against Goodman in 1978, appealed to the Union's International and later to the Labor Department, attended successive Saturday meetings of his slate again and again, and ran for business manager again in January 1981. Coates ran for president in 1978 and participated in the regular Saturday gatherings which furthered the successive election campaigns. Scott ran for vice president in 1978 and for the Union's executive board in January 1981, participated in the court appeal, distributed copies of the decision which set the 1978 election aside, and openly supported Andy Huggins in June 1981. Andy Huggins ran for secretary-treasurer in 1978, testified in the Federal court proceeding setting the election aside, and ran for secretary-treasurer again in January 1981 and for business manager in June 1981. Randy Huggins, Andy's brother, was a poll watcher for that slate in 1978 and distributed election literature for it in the later elections. Bradley acted as auditor at the January 1981 election in support of the Poorman slate. McMillan was a poll watcher for that slate at the January 1981 election and vote tabulator in June 1981. And Gray acted as election tabulator in January 1981, distributed Poorman slate literature, and openly solicited funds in support of the campaign. All of these persons attended meetings of their slate at the home of one of their group on successive Saturdays over a long period of time.

That the union officers, among them Goodman and Woodall, were aware of all these activities by the eight employees is not disputed.

While at the hearing Goodman denied, in conclusionary terms, having threatened to deny work referrals to these members, the following testimony by the employees themselves is not directly contradicted.

Poorman: At the union meeting in 1978 Goodman "stated that all of those boys from 332 better take their cards and go back if they want to eat or make a living, but when this election is over they will not work in Local 135." At another union meeting after that election "William Goodman stood up on the floor, said that Roy Poorman planned to kill me, my assistant, field agents and my secretaries. . . . He said that all those dogs from 332 better keep their cards back if they want to eat or make a living, because here they are no [sic] going to make it. They are not going to get any work. And someone said, 'Call names.' He said, 'You know who I am talking about. Those three dogs from 332, Poorman, Coates and Scott.'"

Randy Huggins: While he was distributing campaign literature in front of the union hall at the 1978 election Goodman was present. "He said that all the people that had been working for Bechtel for years, it is going to change; going to remove all the people that has been like regular employees of Bechtel, they are going to turn us all around."

Harold Coates: At a preelection meeting of the Union's executive board a flareup developed among disputing members with a certain amount of physical violence. Goodman came on the scene. "William Goodman then he started telling me, 'I told you we was going to keep you niggers out of here. Coming up here starting trouble. You ain't going to run for office. You ain't shit.' . . . I don't want to go into all the vocabulary. . . . But he went into that and telling me that I would never work as long as I was in that union. Go back to Philadelphia."

George Scott: At the time of the 1978 election, "[Goodman] stated that he was going to get rid of—he was changing the book system is what he actually said. He said, 'I am changing the book system,' and the reason why he gave for changing the book system: Because the local union—the members of the local union was cam-

paigning against him. He was making sure that these members who was campaigning against him was to be brought in line in other words. . . . In other words, get on the goody-good train is what he made statements; that is what he actually stated." "He made the statement also that he was going to get rid of all the guys from local 332 who had come over by—when he said 'guys' he didn't actually say guys. He said dogs from 332 . . . . He named Harold Coates, Roy Poorman, George Scott and Arnold Clark by name." "He made the statement that if you didn't get on the goody-good train, you would be left at the station. At one membership meeting I do recall I approached him and asked him for a job if I would be able to get back to the Bechtel Power plant. He told me as long as he was business manager, he would make sure that I would never work in the local union." After the district court proceeding had been started "Goodman then told me, said, 'I understand that you have went down to the Labor Department and filed charges against the local union for job discrimination.' I said, 'Yes, I did.' He said, 'Well, I want you to understand one thing: that I give out the jobs here. The Labor Board don't give out jobs in this local union.' He said, 'You go to work when I tell you to go to work, not when you go down . . . . ' He said, 'You can go to the Labor Board or any other branch of the Federal government that you want; you are not going to work till I decide you go to work.' He went over to a large safe, and he took out a ledger, big ledger book. He said, 'I see your name is right here.' He pointed to my name in the book. He said, 'You see that line? There is a red line drawn through that name. And you understand now when you are going to work.'"

Wilson Bradley: Shortly after the January 1981 election, [Goodman] made a couple of statements that he had three dogs that right where he wanted them and he was going to give up all their little puppies and he was going to box them and send them back downtown to 332 where they belonged." "There was another time that he got up on the business manager's report and say, 'If you are not on the goody goodwood's slate . . . you might as well be. . . . That you will be left behind.'"

Rita McMillan: At a union meeting in 1980, "William Goodman stated that all of the people at the power plant were eventually going to have to come home to roost; that they would have to come to him because the power plant, the jobs at the power plant weren't going to last forever." "Well, the day of the election when I arrived, a number of the candidates for both sides were standing outside of the union hall. As I approached, I shook hands with Lawrence King and Andrew Huggins, who were running on the Poorman slate. And then I made way over to a group of people that were standing around Calvin Garner to shake Calvin's hand, and I walked up to him with my hand extended but he refused to shake my hand. He had a bullhorn, and he was saying that I was making the biggest mistake of my life and that if I didn't vote for the right people I would regret it."

Fred Gray: The largest and most regular employer of laborers in the jurisdiction of Local 135 is the Bechtel Company, where hundreds of members have worked for some years. Gray was once laid off, and shortly before the January 1981 election heard the business manager speak at a union meeting. "He used to speak of opposition to him which at that time was the Roy Poorman and his group as running dogs and renegades who jumped around from local union to local union and hoped to take over or seize power wherever they could, or to take over any union that they could. He referred to them as the 'big dogs' and their supporters as the 'little dogs'. . . . He often spoke initially approaching the election for the people to get together and get on the 'good train' if they wanted to be in step with what was happening . . . he often quoted Bechtel in his floor address, in his business manager report. One of those things was that the people at Bechtel will not always be safe, they would not always be away from the body and that eventually they would have to come back to him. He said they would have to roost." In the campaigning before that election Gray heard Calvin Garner, Goodman's assistant shop steward, tell a group of laborers "that heads would roll, there were going to be changes made. A couple of times he specifically addressed the foremens [sic] who all seemed to be in opposition to Mr. Goodman on that job. Among those was Mr. Lawrence King and said that there would be changes made and heads would roll up there."

Andy Huggins: At the time of the 1978 election, Huggins heard Goodman at a meeting of the election judges. "He [Goodman] also made statements at that same election that, if we don't proceed to getting on the goody-good train, then, all of us would be out of work. . . . He said, at that particular time, at that meeting that, he was going to run all the 332 men who were nothing but troublemakers, they was the ones that brought the trusteeship into 332; that he was going to run them out of our local union. That the members of Local 135 don't need that type—particular type of leadership, they're nothing but a bunch of crooks, baggets [sic]; prostitutes; and bulldaggers." "He raised the subject again on election day. On election day I was in front of the local union in front of the steps passing out campaign literature and sample ballots. Mr. Goodman proceeded on saying, 'all those that are not aboard the goody-good train won't get work; those individuals are 332 that's coming up here causing a lot of hectic and hell,' he's going to take—try to get the Executive Board to try to take their cards away from them, and send them back down to 332 where they belong. He particularly pointed out: 'Roy Poorman; George Scott; Arnold Clark; and Harold Coates.'" Again: "While I was passing out sample ballots in January 1981, Mr. Goodman was making statements about 332 men; their head is going to roll, those people at the Bechtel Power plant, who think they have a home, won't have a home after this election is over with, because he's really going to clean house. He's getting tired of this opposition, referring to the Poorman slate which was the only opposition at the time." Recalling the time of the June 1981 election "he [Goodman] was saying: 'if you don't get on board to the goody-goody train, you won't get work.' He particularly stated that he made offers to us, for him to run independent, anybody opposing his entire ticket, and, that, by us opposing his ticket,

that its only making him angry and causing the union a lot of nonsense by us opposing him. So, he made a statement that all of us would not get work."

On this fundamental question of whether the business manager openly expressed his antagonism against these eight members of the Union, and just what words he used to convey his meaning to them, I credit the Government witnesses. The fact that William Goodman did not seriously attempt to contradict them is only one of the grounds for this finding. The conflict that developed over the several years between the two groups—Poorman and his associates repeatedly trying to unseat Goodman and his crowd and the business manager's slate understandably resenting the unceasing attempt—was still seen at this hearing in the animosity reflected in the demeanor of both groups as they testified. Yet, between the two groups, by far the more revealing demeanor was that of Goodman. He was on the witness stand for days, and times without end responded to simple factual inquiries—put even by the Union's lawyer—with pure irrelevant venom against the leaders of his opposition. Moreover, even entirely apart from Goodman's revealing demeanor at the hearing, a more relevant factor supporting this finding that he kept threatening his opposition in the very words they quoted is the position of power and authority the business manager held throughout the entire period of the three elections—in 1978 and twice again in 1981.

This Union runs a hiring hall. There was a regular book maintained all the time where the members signed in after finishing any one job. The contractors in this jurisdiction, those covered by the area contract, called in and asked for as many laborers as they needed. There was a time when, for one reason or another, the book was kept upstairs in the union building and the men signed what was called a yellow sheet instead. This was a loose sheet, renewed every day or week; the names were supposed to be transferred by the secretaries into the regular book, but there is no real proof that this was always done if only because it was admitted many of the yellow sheets disappeared. Insofar as this case is concerned, what counts is that the system was for contractors to call here for men and for the Union to decide who was to get those jobs. It matters not that the contractors in some cases were not obligated by contract to hire only through this referral system. They could do so off the street, by direct recall of older employees, or even by hiring pure outsiders. And it is also a fact that members of the Union were free, without doing violence to any collective-bargaining agreement or their union obligation, to seek employment of themselves, even with unorganized employers. Without question the amount of work resulting from direct hiring as distinguished from union hall referral was relatively very minor.

Among the many defense assertions against these complaints it is contended that the Union cannot be held guilty of wrongdoing because all members—even the named "dissidents"—could, and sometimes did, go to work without having to clear with Goodman or anybody else inside the Union. If they were not compelled to come to the Union, the argument goes, how can they complain of being neglected? It is a worthless defense, for nothing can change the reality that most of the work, as the "book" and "yellow sheets" in evidence show, was in the hands of the Union to give or withhold. Indeed, the major employer in the area, the Bechtel Company, which at the time normally used hundreds of Local 135 members, was in fact covered by an exclusive hiring hall agreement, and hired only people referred out of the hall. In short, the fact is that the Union, that is the officers at any given time in control of the hiring hall system, was the determining force as to which members were to have most of the work throughout the area and which were not to enjoy it.

And of no less importance here is the further truth that William Goodman, the business manager, was really the one who decided how the referral system should be run every day. He was literally in charge of the entire operation. It was a full-time job for which he was well paid by the Union. While the president, Woodall, carried a more impressive title, for that elected position he was paid only $95 a month; for the additional position of a field agent, which he held largely because of the influence of Goodman, Woodall received more than $475 a week. It was in his position as field agent that at times Woodall did the referring. This was true of others also holding positions as field agents, supported by the business manager, and well paid by the Union. In fact, one of the field agents at the time was the business manager's brother, Thomas Goodman. And the secretaries, of course, were entirely under the business manager's daily supervision and direction.

When Goodman kept telling his political opponents and their active supporters at one election after another they had better get on the "goody-good" train, or else, he was not referring to withholding candy from a little child or a McDonald hamburger from a growing boy. He was talking about the only real benefit these men could expect in return for their union membership dues—and it was paid work to which the Union was obligated to refer them according to law. There was no other "goody" the business manager could offer to, or threaten to withhold from, any union member as inducement to help him win or retain the position of power within Local 135. Even so, many times he voiced the threat to withhold work unequivocally. Thus, he told Poorman he and his friends had better stop what they were doing if they "want to eat or make a living," else after the election "they will not work in Local 135." To Coates he stated directly the man would "never work as long as [he] was in that union." He said the same thing directly to Scott, and stressed that it was he, Goodman, who "give out the jobs here." And to Andy Huggins, the business manager said in so many words "all those that are not aboard the goody-good train won't get work." The threat to deny work referrals from the hiring hall to Poorman, Coates, Scott, etc., is therefore clear on this record.

And the threat was made by the Union. In Board parlance, now too long established to warrant belabored discussion, the agents speak for the Union; restated, the union is accountable for what its constituted agents say and do in their official capacity. When William Good-

man, and some of his associates then holding agency positions, made these threats of retaliation, they were the Union, and, of course, when during the years 1980 and 1981 they carried out those threats—as will appear clearly below—they were again acting on behalf of the Union and making the Union, as such, accountable for their misconduct.

I make this very elementary point of law clear now because during the latter stages of the hearing the lawyer who appeared to defend Local 135 and some of its officers, co-actors with William Goodman, attempted obliquely, but not coherently, to disassociate themselves from William Goodman, i.e., to separate him from the Respondent Union as though his activities, past or present, had nothing to do with the labor organization named Respondent in this case from the first to last. When the hearing in the proceeding opened in January 1982 and continued for 3 days, Local 135 was represented by an attorney named Michael Whitlow. One of the witnesses called by the General Counsel then, under the applicable rules, was Business Manager Goodman. He had been the direct day-to-day overseer of the operations of the hiring hall for at least 4 years, and was in complete charge of all its records. While denying any wrongdoing whatever, he refused to produce the hiring hall records despite a ruling denying union counsel's motion to revoke the General Counsel's proper and valid subpoena for production of those documents. The hearing had to be put off for several months while the General Counsel had to resort to United States district court litigation to enforce compliance with the Government subpoena.

When the hearing resumed in April the Union was represented by a different lawyer, one Robert Cohen. He said he was hired in Attorney Whitlow's place when the subpoena was successfully enforced. It was then also brought out that between January and April internal union action had been taken—i.e., within Local 135—to remove William Goodman from office. Indeed, his brother, a field agent under the older brother, was the individual member who filed the charge accusing his brother of wrongdoing in office. Reacting to that charge the executive board of Local 135 removed Goodman from office. The business manager then appealed the ruling to the Laborers International Union, where the matter was still pending when the hearing in this case closed in June 1982. Lawyer Cohen also said during the hearing that, when Goodman left the business manager's position, the hiring hall records were found in disarray with pages cut off or missing, signature sheets out of order and undated, and many of them having disappeared. The result of all this is that the records as produced are very much mixed up, not intelligible, and in many instances not reliable at all. But curiously, and I think significantly, there was nothing to indicate that with the sole exception of William Goodman any other participant in the Goodman slates of 1978 through 1981 left office or stopped having anything to do with the running of the referral system. Field Agent Thomas Goodman and Union President Woodall, who had a lot to do with running the hall both before and after the business manager was removed, were substantive witnesses for Local 135, and talked very disparagingly about William Goodman. The entire purport of their stories was to make the point that, if there is any fault to be found with the way the sign-in and referral books were used and how jobs were selectively given, the blame was Goodman's, and that, if Goodman did or said anything that could reflect on the integrity of Local 135, it shows only that the old business manager did not have the real interest of the "Union" at heart. Ergo, the implication becomes, he is the culprit, hold him accountable, and let the Union, the Respondent here, completely off the hook. At the hearing the Union's second lawyer even referred to Goodman as a hostile witness.

The day will never dawn when the empowered agents of any union can operate a hiring hall for 2 full years with utter disregard of the proscriptions of this statute, and then go scott free merely by superficially discharging the principal illegal activist among them and call him alone the guilty one.

The threat to use the hiring hall referral system as a weapon to retaliate against the eight named opponents of the entrenched union hierarchy having been made, the only question remaining is whether the evidence satisfactorily proves the illegal technique was in fact implemented. I think that it was, again, and again, and again, throughout at least a 2-year period —1980 and 1981. In fact, it was in their attempt to explain away the absolutely incriminating, direct evidence appearing in the Union's own written records—incomplete as they are—that Goodman, Woodall, T. Goodman, and Marvin James, the principal defense witnesses, utterly discredited themselves at the hearing.

Photocopies of the hiring hall documents produced by the Union pursuant to subpoena were placed in evidence. They fall in three categories. One is the "book," so called by the union representatives. It consists of 77 pages, and lists the names of members who signed in for work sequentially from 1979 to 1982. All the pages are detached because, as the Union's second lawyer said at the hearing, "somebody" in the union hall cut the pages out of the book before whoever replaced Goodman as business manager before April 1982 got his hands on them. But it was agreed that the order in which they were marked as exhibit sheets was chronologically correct. You look at a page and in many instances see both the date a man signed in and the date he was referred to work for a marked contractor. There are other markings on many of the pages of this exhibit, but that matter can wait.

The second exhibit, consisting of 108 pages, represents the so-called yellow sheets, each one listing in sequential order the signing in procedure. Not all of these blank pages can surely be said to be arranged in correct chronology, again because the lawyer said that this is how the new business manager found them one day. But there are some markings on these sheets that do indicate when the signatures were written. In any event, the names appearing on these sheets were transferred, presumably with regularity and in timely order, into the "book" exhibit. Not all the names on the yellow sheets appear in the book because some of the names were scratched out

before the transfer of names was made and because, as asserted, the people who ran the hall had reason, sufficient unto themselves, to ignore those particular signatures. Also, there is no proof, nor indeed any claim, that the received copies in fact represent all the yellow sheets that were signed at the time of the events.

The third set of records are separate sheets called referral slips or work forms. The system was that, when a contractor called in to ask for one laborer or more, his call was recorded on such a sheet with date of request, name and address of the contractor, what persons made the call, how many laborers were needed, etc. On that same sheet were written the names of the members sent out to do those jobs. When the contractor asked for a particular laborer by name—as was his right—or asked for a man with a specialized skill, that fact was also, "normally," according to Goodman, written down then and there. The Charging Party in one of these consolidated cases placed 140 of these work orders into evidence. The Union then placed into evidence an additional 1800 such orders spanning a 2- or 3-year period.

At this point a comment on balanced judgment is in order. Both the counsel for the dissidents, who are alleged to have suffered illegal discrimination in the administration of this hiring hall, and the General Counsel have submitted proposed findings of fact, based on the documents in evidence, precisely detailing a substantial number of instances where each of the eight laborers involved suffered loss of employment because the union agents referred out identified members who had signed into the hall on a later date. Careful examination of the union records shows the listed instances of preferential treatment to others did in fact take place. With so many incidents of disregard of the referral system having been shown, the pertinent complaints are fully proved prima facie.

Some of the dissidents testified that they also signed in by putting their names on loose yellow sheets on occasions other than as shown on those produced pursuant to subpoena. Given the fact that many of these sheets were never produced, plus the evidence of pervasive discrimination intended and in fact committed, I have no reason not to believe that testimony. More, some even said that there were times when they came to the hall to sign in but were told they were not permitted to do so. I believe that also. Were I to analyze and report here all the testimony relating to other evidence, tending to prove who knows how many other instances where these men were passed over improperly, this proceeding would go on and on without end while the unlawful conduct continues without restraint or remedy. But the purpose of these proceedings is to put a stop to unfair labor practices, and it would be effectively frustrated were the litigation to continue without end. It is already about 4 years since the conduct began, with Local 135 itself in major part responsible for the continuing delay. I will therefore make the necessary findings here, and leave the matter of further in fact violations, coupled with the compliance questions intimately interwoven with them, to the proper later stages of this proceeding.

Decision here, and findings of in fact discrimination against the eight dissidents, rests essentially on what is shown in writing in the union records in evidence. All the testimony of the defense witnesses amounted to was an attempt to explain away the proof positive as representing instead a perfectly proper operation of a standard hiring hall. I reject all of it as utterly unconvincing. The lead witnesses called by the Union was the business manager himself, whose methods, as he explained them, exemplified the behavior of his subordinates, whom he designated and who of necessity followed his instructions. It will be enough to appraise his testimony to evaluate that of the other agents who much of the time did the referring in his place.

The only writing that ever existed as to how the hiring hall was to operate appeared in the Union's newsletter distributed to all the members. And, of course, it provided, as under Board law it must, that laborers would be referred to work in the order in which they signed in—whatever the form of the book or loose sheets might take.

Faced with the objective evidence that he regularly ignored that order of signing in, Business Manager Goodman listed one reason after another in justification. The one that he leaned on most was the assertion that the members of this Local are really diversified craftsmen, exercising very specialized skills.[1] He said that because he was familiar with the kind of work performed on all the contractor projects in the jurisdiction of Local 135, and because he also knew just which of the over 1000 members possessed the requisite skills for the many different projects, he many times ignored the signing in book and sent somebody else instead. In his own words, he just "disregarded the book."

With the Union's lawyer calling his attention to one work referral slip after another—most of them with no writing to indicate the contractor had asked for any special skill at all—Goodman simply said he knew what was wanted and therefore did as he thought best. To hear him say it, one would think the Laborers Union in the American construction industry is really the same as the diversified AFL Craft Internationals—electricians, operating engineers, carpenters, etc. The fact is laborers are laborers, essentially helpers to the skilled crafts, and no more. If a union agent with absolute power to pick and choose who shall work and who shall not, can off the top of his head, run the hiring hall as a mental operation, what becomes of Board law which says things of this kind must be kept in writing? But what more than anything else really destroys Goodman's claimed defense is that some contractors do request special laborers, either by name or by designation of special experience. A number of the work forms in evidence show such requests in writing. The very fact that some requests do and most of them do not proves that all the contractors were asking for was a laborer, no matter what kind.

Goodman also said he knew some of the people who had signed in really did not want to work too far from

[1] Among the crafts Goodman kept talking about were: caisson work, wagon wheel, highway, jackhammer, brick tender, brick helper, plaster attendant, pipeline work, scaffold builder, tile carrier, mason tender, blacktop man, breakman, whacker, demolition, georgia buggy, bottom man, topman, etc.

home, or when it was too cold, or when the referral was for too short a time. He admitted sending men out to work without making out any referral slips at all. A number of names on the sign-in sheets appear scratched out, either without explanation or simply with the letters "Wk" (working) put down. Goodman said he often did this simply because he had learned from somebody that the man was working elsewhere. He also said he scratched a name off after a man had been on an assigned job for 5 days. Later he said he also did it when a man had worked for only 3 days. Asked was such a change in the rules ever written (it never was), the witness answered: "It varied. . . . It varied." This sort of self-serving exculpation will not do from a man who so many times threatened to use the hiring hall as a weapon to inflict punishment on those members of the Union he did not like.

Shown Andy Huggins' signature in the book, Goodman said he was not referred out because "[h]e was campaigning." Again, asked about the signatures of Scott, Poorman, Clark, and Andy Huggins, the witness answered: "[T]hey signed up for referral, but each time that I would call . . . that they didn't want—they refused jobs because they were campaigning." Goodman even volunteered that while his political opponents signed the book they did not "want work." But the system was, as shown time after time by entries actually made in the book, that when a man was called and either refused or could not accept an assignment the response was recorded in the book. There are no such notations in the book after the names of these men. As a witness Goodman was not only fancifying away the incriminating records, but again revealing his pervasive animosity towards these men.

Interspersed throughout the business manager's testimony came repeated explanations of justification in the form of leading questions put by the union lawyer. Surely not knowledgeable about what happened in so many hundreds of situations, over so long a period, Goodman kept replying to such loaded questions with comments such as "I guess that's what happened" or "evidently." Decision here will rest on what the written documents show, and not on this man's conclusionary assertions of innocence.

The testimony of the other three witnesses in defense is no more convincing. Woodall, the president, said that more than once Poorman, Coates, and Scott told him they did not want to do brickwork. He continued that he regularly telephoned people to check whether they had what he deemed necessary qualifications for the jobs involved and pursued that course while ignoring the regular listed names in the book. But there are no notations in the records about such job offerings refused. Woodall's explanation for this was: "You don't have time to make no notations." But Woodall did say he scratched names off the list, or wrote "Wk" next to the names, just because he learned, from sources other than the signers themselves, that the men were working somewhere. He said directly that all of the eight people here involved were not experienced brick tenders. But his superior, the business manager, said the opposite, one by one naming Coates, Poorman, Scott, Andy Huggins, Randy Huggins, and Gray; Goodman said clearly they were "all around laborers." In the end Woodall was asked was there any work the laborer members of this Local could do that is not a specialized skill. His answer was: "Sweeping!"

Marvin James, also a paid field agent who ran for office several times on the Goodman slate, spoke about often giving preferential, out-of-turn referral to certain members as a reward for having done picket duty. But there is no documented proof in the records of such possibly permissible exceptions to the hiring hall rule. James added he often made no records of any kind or even filled out any work form referral sheets for such assignments preferring pickets. His testimony is that while on occasion he did make a record of some kind "but, you know, it meant nothing." Contrary to the opinion of this witness, I find that "it" means very much. In fact, I deem the testimony of this field agent as a literal admission that this union simply ignored its hiring hall system and that its authorized agents, in control of distribution of all jobs, satisfied their personal whims and prejudices in total disregard of Board law. In this instance, they satisfied their vendetta against the eight unsuccessful dissidents in the membership.

Thomas Goodman, the business manager's brother, who ran succesfully for recording secretary twice in 1981, also said he used to call people at home to give them jobs "without the book." He testified, " I have my own personal book with numbers in it. . . . It's just a book with everybody's name on it—not everybody, but some names on it. The witness then added that this was a book he made himself, and that the names were "roughly 15 or 20" laborers, "the rest of them personal." I need hardly comment that, when a union official, exercising power to assign work pursuant to an allegedly systematic referral book, carries his own personal choice of names in his pocket and gives the work out according to his personal predilections, all his attempts to talk away the unfair labor practices revealed in the union records themselves mean nothing.

Wilson Bradley: This man signed a yellow sheet in July or August 1980; his name was transferred to the book in July or August of that same year. He was not referred out to work at all throughout the rest of the year. During that same period six members of Local 135 were sent out to work on referral slips to the Bechtel Company: Crawford, on September 18, 1980; Tabourr, on September 25, 1980; Fedchak, on September 25, 1980; Janifer, on October 13, 1980; Evans, on October 13, 1980; and Hill, on December 3, 1980. Six other members of the Union were referred, as the work forms show, to other employers during that same period: Moon, on August 27, 1980; Clyde Bradley, on September 16, 1980; Faison, on September 3, 1980; Boggs, on September 23, 1980; Mumson, on September 18, 1980; and Smith, on September 22, 1980.

Andrew Huggins: This man signed a yellow sheet in November or December 1980; his name was transferred to the book on December 3, and again in March 1981. He was first called for referral on April 6, 1981. Before that date, but after he had signed in, five members were referred to work at Bechtel—Hill, Garnes, Simmons,

Bullock, and Hall. During that same period eight other members were referred to work at other contractors—Bullock, Cruel, Bullock, Bullock, Scott, Hill, Benjamin, and Benjamin.

Harold Coates: This man signed a yellow sheet in December 1980 or January 1981; his name was placed in the book on March 11, 1981. He was first sent out to work on June 17, 1981. Because that job lasted only 3 days his name should not have been struck from the list, as apparently it was; the rule was that a name was removed from the list only if the assignment to which he was sent lasted at least 5 days. The following four members of the Union were referred to work out of turn in this instance to the Bechtel Company: Williams, Anderson, Sankler, and Council. The following eight union members were referred out of turn to other contractors during that period in prejudice to Coates: Smith, Moon, Clyde Bradley, Darden, Pender, Bellito, Moon, and Jordan.

Roy Poorman: This man's name appears on a yellow sheet that was later, on March 5, 1980, transferred to the book. Poorman's name appears next as having signed in July 1981. In April 1980 he was called twice and a notation made in the book that he had no transportation. There is no record of his ever having been called again throughout the period to July 1981. Since he was called only twice during that period, under the rules then applicable, his name remained valid continuously because the rules provided that after a man was called three times and did not accept referral his name automatically was to move to the bottom of the list as it then stood in April 1980. From this it follows that the following referrals, all shown clearly on the documents, were out of turn with respect to this man: Five to the Bechtel Company between December 1980 and June 1981—Hill, Allemon, Dunston, Anderson, and Ross. Four more members were sent to other contractors during the same period—Anderson, Johnson, Bryant, and Williams.

Fred Gray: This man signed a yellow sheet about April 27, 1981, and his name was moved to the book on May 22, 1981. The first notation of any action by the Union to that signing is one dated June 24, 1981. This means all referrals between May 22 and June 24 of members who signed in after him were out of turn and illegal. Four men were so given preferred referrals: Lockman, Clairmont, Clark, and Burrell.

Rita McMillan: This lady signed a yellow sheet at the latest on April 24, 1981; her name was shifted to the book on May 22, 1981. She was first called for work on June 24. Between the day she signed the yellow sheet and June 24, four members who signed in after her were given work referrals: Lockman, Clairmont, Clark, and Burrell.

George Scott: This man signed a yellow sheet before March 5, 1980, and his name appears as having been transferred to the book on March 5. There are notations near his name on the book dated April 3 and April 11 saying he was called but told the Respondent Union that he had no brakes on his car or had to go somewhere else and therefore could not accept the referral. Another notation next to his name says "working." Scott testified he never received these calls so noted, and that he was not working at that time. Against the unbelievable testimony of the witnesses who were in charge of these records, I credit him. For the least, any out-of-turn referrals made between March 5 and April 3 were absolutely illegal. There were at least nine: Briggman, on March 26; Collins, on March 11; Roberts, on March 19; Pugh, on March 11; Brown, on March 6; Zelesnick, on March 5; Willis, on March 5; McCrea, on March 28; and Jefferson, on March 5. All of these referrals are proved by the work form or referral exhibits placed into evidence by the Union itself.

Randy Huggins: This man signed a yellow sheet on February 27, 1981. His name was first transferred to the book on May 6 at the latest. The only entry appearing on these records is that he was working on March 19. This means that all referrals of members after February 27 were out of turn. Seven members of the Local were referred to the Bechtel Company during the period February 27 to May 19: Cornish, Camps, Fuentes, Sinkler, Allen, Johnson, and Cirullo. Nine other members were so referred out of turn to other contractors during that same period: English, McCrea, Heller, McCrea, Oliver, Heller, English, McCrae, and Johnson.

I conclude that with respect to each and every instance listed above where the Local 135 agents referred members out of turn the Respondent Union violated Section 8(b)(1)(A) of the Act. A meticulous analysis of the record in its entirety will show many other instances of similar violations with respect to each of the eight dissidents named, as the briefs of the General Counsel and the Charging Party dissidents very clearly detail. But no useful purpose would be served by lenghtening this decision with such further factual findings at this stage of the proceeding. The pattern is clear, and has been found.

The question of how many times it happened is interwoven with the question of how much money the Union must now pay these members for the losses it inflicted on them, up to the day it ceases its illegal conduct. It will be better, therefore, to leave both the questions of how many times the eight suffered discrimination and how much they lost in consequence in wages as a result to the compliance stage of the proceeding. Cf. *Iron workers Local 373 (Building Contractors)*, 232 NLRB 504, 517 (1977).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices committed by the Respondent Union set forth in section III, above, occurring in connection with the operations of the diversified employers in the construction industry, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

The Respondent Union must be ordered to cease and desist from the commission of the unfair labor practices found herein. It must be ordered to reimburse the 13 members who were illegally fined, with interest on their money. It must also be ordered to make whole each of

the eight so-called dissidents who suffered loss of work because of the illegal discrimination exercised by the Union in the improper operation of its hiring hall by payment to each of them of a sum of money equal to that which they would normally have earned from the date when the Union's discrimination against them started to the time it ceases the wrongful conduct, less net earnings during that period, with backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).[2]

CONCLUSIONS OF LAW

1. By in fact causing construction contractors operating in its territorial jurisdiction to discriminate against the eight individuals named in the complaints, in violation of Section 8(a)(3) of the Act, the Respondent Union has violated and is violating Section 8(b)(2) and Section 8(b)(1)(A) of the Act.

2. By threatening to fine and fining employees for refusing to engage in strike action in violation of the Respondent Union's collective-bargaining agreement with the employers of those employees, the Respondent Union has restrained and coerced employees in the exercise of their rights guaranteed by Section 7 of the Act and has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(b)(1)(A) and Section 2(6) and (7) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

[2] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).